

RESOLUTION NO. 16-033

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS APPROVING CONDITIONAL USE PERMIT NO. UP16-0008 TO ALLOW OPERATION OF A DAY CARE FACILITY FOR A MAXIMUM OF 45 STUDENTS IN AN EXISTING COMMERCIAL BUILDING LOCATED AT 91 SOUTH ABBOTT AVENUE, MILPITAS, CA 95035

WHEREAS, on, May 04, 2016, an application was submitted by Wayne Renshaw with Wayne Renshaw Architects on behalf of Gireesh Malhotra to allow a 2,314 square foot new day care facility located at 91 South Abbott Avenue (APN 022-28-017). The property is located in the Neighborhood Commercial (C1) zoning district; and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project is categorically exempt from further environmental review pursuant to Section 15301 (Existing Facilities) of the Guidelines for the Implementation of CEQA; and

WHEREAS, on September 14, 2016, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

SECTION 1: Recitals. The recitals set forth above are true and correct and incorporated herein by reference.

SECTION 2: Record. The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission.

SECTION 3: CEQA. The project is Categorically Exempt from further environmental review under the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) of the Guidelines for the Implementation of CEQA as the project consists of the minor alteration of existing private structures and features involving negligible or no expansion of use.

SECTION 4: *Conditional Use Permit (Section XI-10-57.04(F)(1)) - The Planning Commission makes the following findings based on the evidence in the public record in support of Conditional Use Permit No. UP16-0008:*

- a. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

The proposed child care facility will serve the community by providing additional child care options for residents, and, as designed, will have no detrimental or injurious impacts on the property or improvements in the vicinity of the property. The operation of the facility will be in compliance with all local, state, and federal regulations.

b. The proposed use must be consistent with the Milpitas General Plan

The table below outlines the project's consistency with applicable General Plan Guiding Principles and Implementing Policies:

Table 5: General Plan Consistency

Policy	Consistency Finding
<p><i>Policy 2.a-1-33:</i> <i>Encourage the establishment of daycare facilities consistent with State standards, including the issuance of use permits for a large daycare facility where compatible with surrounding neighborhoods and commercial uses, particularly in public facilities such as community centers, churches, and schools and in employment centers and large housing developments.</i></p>	<p>Consistent. The project is consistent with this finding because it will offer child care facilities that, as a Condition of Approval, will be required to comply with all local, state and federal regulations. The project is located in a commercial area surrounded by residential uses, which will provide the community with a service to serve their needs.</p>
<p><i>2.aI-7:</i> <i>Provide opportunities to expand employment opportunities in partnerships with local businesses to facilitate communication, and promote business retention.</i></p>	<p>Consistent. The project would provide employment opportunities and revitalization of the commercial center by replacing a vacancy with a use that would be complementary to existing uses within the center.</p>

c. The proposed use must be consistent with the Milpitas Zoning Ordinance.

The proposed child care center conforms to the Milpitas Zoning Ordinance in that the use is a conditionally permitted use in the Neighborhood Commercial (C1) district and complies with the development standards and parking requirements. The project does not propose any addition of square footage to the building; the applicant will be making interior modifications to an existing tenant space. In addition, the project also proposes site improvements to construct an outdoor play area; the applicant will be removing five parking spaces and adding play equipment with a new cushioned mat, a sand box, an artificial turf area to play, student vegetable and flower garden, and an area for circle time activities and tricycle races. The setback requirements, Floor Area Ratio (FAR), and landscaping requirements remain the same and hence consistent with the Milpitas Zoning Ordinance.

Parking

Table 2 demonstrates the project's compliance with the Zoning Code parking standard per Milpitas Municipal Code Section XI-10-53 (*Off-Street Parking*).

Table 2: Parking Summary

Uses	Parking ratio	Square footage/ number	Required Parking	Provided Parking
Music and Dance School				
Music Classes	1 per classroom	11	11	11
Dance Studio	1 per 150 sq. ft.	1,498 sq. ft.	10	10
<i>Footsteps Preschool</i>				
Classroom	1 per 500 sq. ft.	2,314 sq. ft.	5	11
Loading and Unloading	1 per 6 children; up to 5 spaces and thereafter 1 per 10 children	45 students	5 1	
			Total 11	
Total Number of Spaces Required				32
Total Number of Parking Spaces Available				32*
Parking includes: 18 Standard Parking Spaces, 12 Compact Parking Spaces, 8 Bicycle Spaces= 1 Parking Space*, 2 Motorcycle Spaces= 1 Parking Space* Total Parking Spaces = 32				
*Per Section XI-10-53.13 (B)(4), omission of one parking space is allowed for each eight bicycle spaces provided and omission of one parking space is allowed for each two motorcycle spaces provided. Hence the total parking calculation comes up to 32 spaces available.				

Footsteps Preschool will be sharing the parking spaces with Veksler Music and Dance Academy. The Music and Dance Academy is an after school program which will operate from 3pm to 8pm. They will cater to an age group of 3 years to adults for one on one sessions in the music classes (11 classrooms) and an age group of 3 years to 15 years for a maximum of 12 students in the dance studios (2 dance studios). At any given time maximum occupancy of the music and dance academy is 35 students. Staff believes that since the site has only two business owners, the demand in parking can be offset by staggering the classroom hours and drop-off and pick-up times.

The after school programming at Veksler Music and Dance Academy has recently started operation and is not running at full capacity currently. The Academy owner, who is also the property owner, has agreed to work with Footsteps Preschool to stagger class schedules in the future to avoid parking congestion at the site, a fact that is included in the conditions of approval for the project.

d. The proposed use must be consistent with the Milpitas Child Care Master Plan.

The table below outlines the project's consistency with the goals and implementation policies of the Milpitas Child Care Master Plan dated April 2, 2002.

Table 5: Milpitas Child Care Master Plan Consistency

Policy	Consistency Finding
<i>Long Range Goal: Every child and family has access to affordable, safe, quality child care</i>	Consistent. The project proposes a 2,314 square foot child care facility. The facility will accommodate 45 children and serve the surrounding the neighborhood.
<i>Accessibility Policy 2.2-G-I: The City of Milpitas promotes the retention of existing facilities and the development of new child care facilities within the city limits.</i>	Consistent. The project proposes a new child care facility within the city limits which is consistent with the accessibility policy.

SECTION 5: The Planning Commission of the City of Milpitas hereby adopts Resolution No. 16-033 approving Conditional Use Permit No. UP16-0008 based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 incorporated herein.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on September 14, 2016.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on September 14, 2016, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Sudhir Mandal				
Lawrence Ciardella				
Hon Lien				
Rajeev Madnawat				
Ray Maglalang				
Zeya Mohsin (Alternate)				
Demetress Morris				
Gurdev Sandhu				

**CONDITIONS OF APPROVAL FOR
FOOTSTEPS PRESCHOOL
CONDITIONAL USE PERMIT NO. UP16-0008**

General Conditions

1. General Compliance. The applicant, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This Conditional Use Permit No. UP16-0008 (“Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County’s Recorder Office and a copy shall be provided to the Planning Division.
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
 - a. Acceptance of this Permit by Permittee; and
 - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Permit Expiration. Pursuant to Section XI-10-64.06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
 - a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.
5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**
6. Project Job Account. If Permittee’s project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee’s private job account is paid in full and the required deposit has been made.

Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit.

7. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1).
8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition.
9. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution.
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
11. Previous Approvals. Permittee shall abide by and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.
12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. Permittee shall enter into an

indemnification agreement with the City that incorporates the provisions of this condition prior to commencing the use authorized in this Permit.

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
15. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on September 14, 2016 in accordance with these Conditions of Approval.

Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**

16. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. **(ALL)**

Project Specific Conditions

17. Operations.
 - a. Approval is granted by the Planning Commission to allow for the use of 91 South Abbott Avenue as a day care facility.
 - b. The maximum number of children permitted to be enrolled at all times shall be 45 children. Permittee shall also meet all State and local (Building and Fire) occupancy limitations or requirements. **(P)**
 - c. Hours of operation are approved from 7:00 AM to 7:00 PM, Monday through Friday. In addition, Permittee may operate between 7:00 PM and 9:00 PM, Monday through Friday, and between 7:00 AM and 7:00 PM on Saturdays or Sundays no more than once per month in order to host special events such as open houses, parent nights etc. **(P)**
 - d. Any change in the hours of operation will require a written request addressed to the Planning Director or Designee. The Planning Director or Designee, in his or her discretion, may approve or deny the request in writing. **(P)**

18. Pick-up and Drop-off.

- a. The Permittee shall maintain and enforce the staggered pick-up and drop-off schedule as described below. Any changes to the staggered pick-up or drop-off schedule shall require the approval of the Planning Director or Designee in writing. **(P)**

Hour of the day	Number of students arriving	Number of students departing	Total number of students at school	Total staff members at school
7:00 am to 8:00 am	5	0	5	1
8:00 am to 9:00 am	10	0	15	2
9:00 am to 10:00 am	15	0	30	3
10:00 am to 11:00 am	10	0	40	4
11:00 am to 12:00 pm	5	0	45	4
12:00 pm to 1:00 pm	0	15	30	4
1:00 pm to 2:00 pm	15	0	45	4
2:00 pm to 3:00 pm	0	7	38	4
3:00 pm to 4:00 pm	0	10	28	3
4:00 pm to 5:00 pm	0	10	18	2
5:00 pm to 6:00 pm	0	8	10	2
6:00 pm to 7:00 pm	0	10	0	2

- b. The Permittee shall co-ordinate class schedules with the adjacent business owner to maintain staggered pick-up and drop-off of students to avoid traffic congestion on site. **(P)**
- c. All children must be safely escorted to/from inside the building by parents or a dedicated staff member. **(P)**
19. Signage. The Permittee shall erect drop-off/pick-up signs on six (6) parking spaces meant for the loading/unloading of children and these spaces must be dedicated to drop-off and pick-up for Footsteps Preschool. The design of the signage is subject to review and approval by the Planning Department and Transportation Department.
20. Outdoor Play Area. The Preschool is allowed no more than 25 children in the outdoor play area at any given time. The Permittee is required to stagger play time for the children in order to accommodate this condition. **(P)**

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(CA) = City Attorney